SUPREME COURT OF THE UNITED STATES.

No. 380.

WILLIAM W. WOODFOLKE, APPELLANT,

vs.

EDMOND M. IVENS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

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1 *Citation.*

MIDDLE DISTRICT OF TENNESSEE:

At a circuit court of the United States, begun and held at the capitol of said State, in and for the district aforesaid, on the third Monday, being the sixteenth day of April, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the 90th year.

Present: The Honorable Connully F. Trigg, United States district judge for the several districts of Tennessee.

Present also, Edwin R. Gluscock, esq., U. S. marshal, and E. R. Campbell, clerk.

The following proceedings were had, to wit:

Bill of exceptions.

EDMUNDS M. IVENS
vs.
W. W. WOODFOLK.

Be it remembered, that this cause came on for trial before Hon. Connully F. Trigg, holding the circuit court of the United States for the middle district of the State of Tennessee, at Nashville, on the 13th day of May, 1866, and a jury, and thereupon the plaintiff read the pleadings, which are as follows:

Summons.

2 The President of the United States of America to the marshal of the middle district of Tennessee, greeting:

You are hereby commanded to summon William W. Woodfolk, a citizen of the State of Tennessee, if to be found in your district, to be and appear before the judges of the circuit court of the United States in the sixth circuit for the district of Middle Tennessee, at the "federal court-room," at Nashville, in said State, on the third Monday in October next, then and there to answer Edmond M. Ivens, a citizen of the State of Pennsylvania, of a plea of trespass on the case, to his damage five thousand dollars. Herein fail not, and have then and there this writ.

Witness Roger B. Taney, esquire, Chief Justice of the Supreme Court of the United States, this the third Monday in April, in the year of our Lord eighteen hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[SEAL.] E. R. CAMPBELL, *Clerk.*

Upon the back of said summons are the following indorsements, to wit:

This summons was issued on the 20th day of July, 1864.

E. R. CAMPBELL, *Clerk.*

Return.

Came to hand July 22d, 1864; executed on W. W. Woodfolk, and delivered to him a copy of the declaration July 22, 1864.

E. R. GLUSCOCK, *M. M. D. T.*

Declaration.

On the 20th day of July, 1864, a declaration was filed, which is as follows, to wit:

Circuit court of the United States for the middle district of Tennessee.

Edmond M. Ivens, a citizen of the State of Pennsylvania, by attorney, complains of William W. Woodfolk, a citizen of the State of Tennessee, and a resident of the middle district of Tennessee, duly summoned, &c., of a plea of trespass on the case.

For that the said William W. Woodfolk, at New Orleans, to wit, in the district aforesaid, on the first day of August, 1861, made his certain promissory note in writing of that date, which is here in court produced, and whereby on the first day of December then next promised to pay to the order of said Edmond M. Ivens twelve hundred and thirty-three 33-100 dollars, payable at the office of William M. Perkins & Co., New Orleans, with interest at the rate of eight per cent. per annum after maturity until final payment, and then and there delivered said promissory note to said Ivens, and also for

3 that the said Wm. W. Woodfolk, at New Orleans aforesaid, on the same first day of August, 1861, then and there made his certain other promissory note in writing, of that date, which is here in court shown, and thereby, on the first day of November, 1862, after date, promised to pay to the order of the said Edmond M. Ivens two thousand two hundred and forty 44-100 dollars, payable at the office of Wm. M. Perkins, New Orleans, with interest at the rate of 8 per cent. per annum after maturity, until final payment, value received, and then and there delivered said promissory note to said Edmond M. Ivens; and when said notes became due and payable, the same were severally presented for payment of the office of Wm. M. Perkins & Co., New Orleans; but the said Wm. W. Woodfolk neglected and refused to pay the same, or either of them, or any part thereof, and thereby became liable; and, in consideration thereof, then and there promised the plaintiff to pay him the said sums of money in said promissory notes specified, with eight per cent. interest after said notes came to maturity, which was legal and constitutional interest, according to the laws of the State of Louisiana, where said notes were made payable according to the tenor and effect of said notes, when thereto requested. Yet, though often requested,

5 the said defendant hath not paid to the plaintiff said sums of money, or any part thereof, but neglects and refuses so to do, to his damage five thousand dollars, and therefore he sues by Francis B. Fogg, his attorney.

On the 19th day of October, 1864, defendant filed his pleas, which are as follows, to wit:

Pleas.

Circuit court of the United States for the middle district of Tennessee.

EDMOND M. IVENS, pl'ff,
vs.
W. W. WOODFOLK, def't.

And the said defendant, W. W. Woolfolk, by his attorney, come and defends the wrong and injury, when, &c., and craves oyer of the two promissory notes in the said declaration mentioned, as they are read to him as follows: (Here it is agreed that they are inserted.) And the defendant says actio non, because he says that the said plaintiff and the said defendant entered into the following contract in the city of New Orleans, on the 5th day of July, 1861. (Here it is agreed that it is inserted.) And defendant avers, that under that contract, and in pursuance thereof, he paid the plaintiff the said sum of $496 30, and executed said two notes, and delivered the same to Wm. M. Perkins & Co., of the city of New Orleans, as an escrow, to be by them kept, on the special condition that the said plain-
6 tiff should deliver, as specified in the contract, one portable steam engine, 11-inch cylinder, 20-inch stroke, 60-inch circular saw-mill, with 30 feet of carriage, together with bells, and everything necessary to make a complete engine and saw-mill, with steam and water gauge, steam whistle, &c; also 40 feet of 3-in. shafting, with pallas boxes, couplings, &c., necessary to work four gin stands and corn mill, one pair of axles and wheels, one complete cotton-seed carrier, 1.30-inch double-geared Staub corn-mill, and 120 feet of 10-inch 4-ply gum belting, and furnish a mechanic to erect the same; and the said plaintiff guaranteed that said machinery should be perfect and complete machinery, and he further guaranteed that the said machinery should saw 6,000 feet of one-inch boards per day, when properly managed. And the defendant further avers that it was agreed between the plaintiff and defendant that the said Wm. M. Perkins & Co. should hold and keep said two notes sued on, and the same should not be delivered until the defendant, or his authorized agent on his plantation, should accept of said machinery, and by their letter of acceptance of said machinery, presented to the
7 said William M. Perkins & Co., the said Wm. M. Perkins & Co. should then deliver said notes, mentioned in the declaration, to the plaintiff, and not before.

And the defendant avers that the plaintiff failed to deliver, and have erected on his plantation the machinery and engine, as specified in said contract, and that he, the defendant, nor his authorized agent on the plantation, did not accept the same, and did not, by letter of acceptance of said machinery, authorize the delivery of said notes sued on to the plaintiff, and this he is ready to verify. Wherefore he prays judgment if he ought to be charged with the said two notes mentioned in the declaration, or the debts therein specified in said two notes sued on.

JO. C. GUILD, *At'y for Def't.*

Affidavit.

The defendant appeared before me, the clerk of the circuit court, and made oath that the above plea is true, to the best of his knowledge and belief.

WM. W. WOODFOLK.

Jurat.

Subscribed and sworn to before me, this 19th day of October, 1864.
E. R. CAMPBELL, *Clerk.*

And the said defendant, by his attorney, comes and defends the wrong and injury, when, &c., and says that he did not promise,
8 or upon himself assume in manner and form as by the plaintiff above thereof complained against him, and of this def't puts himself upon the country.

JO. C. GUILD, *Atto. for Def't.*

Replication plea.

And the plaintiff, also, Bogg for pl'ff, and for further plea in this behalf, by leave of the court first had and obtained, the def't comes and defends the wrong and injury, when, &c., and says that the plaintiff ought not to have and maintain his aforesaid action thereof against him on the two notes mentioned in the declaration, because he says that the consideration of said notes was founded on a contract entered into by the plaintiff with the defendant, to deliver an engine and machinery to work 4 gin stands, saw and grist mill, all complete and perfect, the same to be erected on his plantation in Arkansas, and which was to have been delivered and erected within a reasonable time from the 5th of July, 1861, in time to gin the cotton crop of that year; and the defendant avers that he failed to deliver and have erected such a gin and machinery, perfect and complete, as specified in said contract, and he avers that the machinery and engine that he caused to be erected was not such as he had bound himself to deliver and erect; it was not perfect and complete, and did not per-
9 form with the proper management, as he had agreed and bound himself that it should perform; but the same was defective and incomplete, and not erected in a reasonable time, so as to gin the cotton raised in the year 1861. And by reason of the plaintiff failing to comply with his said contract, the consideration of said notes sued on has failed and defendant greatly damaged, which he is ready to verify. Wherefore he prays judgment if the plaintiff ought further to have and maintain his aforesaid action thereof against him.

JO. C. GUILD,
Atto. for Def't.

On the 25th day of October, 1864, plaintiff filed his replication to defendant's pleas, which is as follows:

Replication.

Circuit court U. S., middle district of Tennessee.

EDMUND M. IVENS
vs.
W. W. WOODFOLK.

And by way of replication to the first and third pleas of defendant, the plaintiff says, that he did deliver to said W. W. Woodfolk or his agent, as specified in the contract, the machinery agreed to be delivered in good order and condition, perfect and complete machinery according to the terms of said contract, and that the same was accepted by said defendant or his agent
10 and put up on his plantation, and was in all respects in conformity with said contract, and this he prays may be inquired of by the country.

F. B. FOGG, *for Pl'ff.*

And issue.

JO. C. GUILD,
Atto. for Def't.

And as to second pleas whereby the def't puts himself upon the country, pl'ff doth the like.

F. B. FOGG, *for Pl'ff.*

The plaintiff then read the following depositions:

Wm. M. Abernathy, Albert Hening, George Puryslone, John Clarke, David R. Eakin.

The defendant excepted to the reading of the depositions of Clarke and Puryslone for want of notice or interrogatories filed, but the objection was overruled and the depositions were read.

Commission.

The President of the United States of America to , greeting:

Know ye that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority, to examine William M. Abernathy, Albert Hening, and David R. Eakin, of New Orleans, in the State of Louisiana, on oath, as a witness in a cause depending in the circuit court of the United States for the sixth circuit and middle district
11 of Tennessee, wherein Edmond M. Ivens is plaintiff and William W. Woodfolk is defendant, on the part of the plaintiff on the interrogatories and cross-interrogatories annexed to this commission. And therefore you are hereby commanded that you cause the said William M. Abernathy, Albert Hening, and David R. Eakin to come

before you, at your office in the city of New Orleans, on the day of , 1865, and then and there take such examination, and reduce the same to writing, and return the same annexed to this writ, closed up under your seal into the said circuit court, before the judges thereof, with all convenient speed.

Witness the Hon. Salmon P. Chase, esquire, Chief Justice of the Supreme Court of the United States, at Nashville, in said district, this the 10th day of March, 1865, and the 89th year of the independence of the United States.

[SEAL.] E. R. CAMPBELL, *Clerk.*

Interrogatories filed by plaintiff.

In the circuit court of the United States, at Nashville, for the district of Middle Tennessee.

EDMOND M. IVENS
v.
W. W. WOODFOLK.

Interrogatories to be propounded to William M. Abernathy, Al-
12 bert Hening, and David R. Eaken, of New Orleans, in the State of Louisiana, witnesses to be produced and sworn before A. Boudousquie, esquire, a notary public of New Orleana, at his office in said city of New Orleans, to be read on the trial of said cause:

1st. Do you know the plaintiff and defendant in this cause, and how long have you known them?

2d. Please look at the copy of the contract herewith filed, between said Ivens and Woodfolk, and state whether the machinery therein specified was delivered and erected, and what was the condition thereof; and whether the same was received by said Woodfolk, or his agents; and whether any objection was made to the goodness or efficiency of said machinery by said defendant or his agents at the time it was received, or afterwards, until suit was brought against Woodfolk? Please state particularly.

3d. Who was the person who delivered the notes sued on in this cause to the plaintiff after the machinery was delivered and erected? What proof of its acceptance and delivery and sufficiency was furnished to said agent of defendant, and at what time did this occur?

13 4th. Please describe the condition and value of the machinery when delivered; what was its value in July, 1864? was any offer made by Woodfolk or his agents to return the same to plaintiff?

5th. Please state particularly any other matter or thing in regard to said contract, and the circumstances relating to the delivery or the quality of the machinery and its acceptance by defendant that may be of benefit or advantage in this cause, although not particularly embraced in the foregoing questions.

FRANCIS B. FOGG,
Att'y for Pl'ff.

Nashville, Feb'y 28th, 1865.

Cross-interrogatories filed by the defendant.

In the circuit court of the United States for the middle district of Tennessee.

EDMOND M. IVENS }
v.
W. W. WOODFOLK. }

The cross-interrogatories to be answered by William M. Abernathy, Albert Hening, and David R. Eakin, of New Orleans, in the State of Louisiana:

1st. State if either or all of the above-named witnesses were in the employment of the plaintiff Ivens when the machinery was erected, and if they are still in his employment, and if they are interested with said Ivens.

2d. Did either or all of you assist to erect the engine and machinery, and at what time did you erect it? State the day of the month and year.

14 3d. Was the defendant, Woodfolk, on his plantation when the engine and machinery was erected?

4th. State if Dr. J. E. Lewis was or was not said Woodfolk's agent and doctor on his plantation at the time you erected the machinery.

5th. State if Dr. Lewis, as agent for Woodfolk, did or did not refuse to accept or receive the engine and machinery, and to give a letter of acceptance to Wm. M. Perkins & Co. on account of its imperfections, and not being in compliance with the contract.

6th. State if Dr. Lewis did not receive the engine and machinery, who did receive it; give his name, and did he show you a power of attorney from Woodfolk authorizing him to receive it?

7th. Do you know anything personally of the delivery of the notes of the defendant by Wm. M. Perkins & Co. the plaintiff? and if so, when? and if by any letter of acceptance from any one, produce and file that letter with your answer.

8th. State if you did or did not put a spark arrester on the chimney of the engine when the machinery was erected.

9th. State if an engine could be run without a spark arrester, unless at the great risk of burning down the gin house?

10th. State if the gin house did or did not take fire from
15 the sparks thrown out of the chimney while you were there, for the want of a spark arrester?

11th. State if the machinery was complete without a spark arrester.

12th. Did, or did not, Woodfolk have to purchase a spark arrester after you erected the machinery? If so, state from whom he purchased it, and how long after you erected it, and what he had to pay for it extra. State if the spark arrester, including the costs of having it attached to the chimney and including freight and other charges from New Orleans, would not cost more than two hundred dollars.

13th. State how many negro men of defendant's you employed when the machinery was in operation to guard with buckets of water to keep the sparks from burning up the gin house, and state if those hands were not then, at that season of the year, worth from two to three dollars per day.

14th. State if there was, or was not, a good well of water, and also a good cistern of water built for supplying the engine with water within 20 or 30 feet of the engine.

15th. State if the engine could or did draw its supply of water from either the well or cistern by a pump.

16 16th. State if it did, or did not, take two good hands to supply the engine with water, by buckets or otherwise, while running. State what their services were worth at that busy cotton picking season of the year.

17th. State if an engine and machinery is complete and perfect that will not draw its own supply of water, and that is without a spark arrester.

18th. State who furnished the files, how many was furnished to put the saw in order; and also state if Woodfolk did not furnish part of the "gum belting," and what were the files and belting furnished by Woodfolk worth?

19th. State who boarded the hands that put up the engine, and how long were they boarded.

20th. State how many of Woodfolk's hands were employed in erecting the engine and machinery. State how long they were employed.

21st. Did, or did not, Woodfolk, soon after he reached his plantation, write to said Ivens that the engine and machinery was not in compliance with the contract, and that he would not pay for it, and wished him to take it back?

JO. C. GUILD,
Atto. for Def't.

Depositions.

United States circuit court for the sixth circuit and middle district of Tennessee.

EDMOND M. IVENS
v.
WILLIAM W. WOODFOLK.

MARCH 9TH, 1865.

17 Testimony of witnesses taken before the undersigned, a United States commissioner, duly commissioned and sworn, in and for the eastern district of Louisiana, residing in the city of New Orleans, in the above-entitled action, this 29th day of March, in the year of our Lord one thousand eight hundred and sixty-five, under and by virtue of the commission hereto annexed:

William M. Abernathy, a witness produced, sworn, and examined by me, under said commission, being first duly sworn according to law, answers as follows:

First. To the first interrogatory he says: I know the plaintiff, but

not the defendant. I have known the plaintiff some 8 or 9 years past.

Second. To the second interrogatory he says: I have looked at the contract referred to in this interrogatory, and say that the machinery therein referred to was delivered and erected as specified in said contract; the said machinery was entirely new and in good order at the time it was so delivered and erected; the machinery was received at Mr. Woodfolk's plantation by some one of his agents, and no objection was made by the person who received said machinery, to my knowledge. I never heard any objection by or on behalf
18 of Woodfolk, until this suit was brought concerning this machinery.

Third. To the third interrogatory he says: It was Mr. Wm. M. Perkins, of the firm of Wm. M. Perkins & Co., of New Orleans, and the same person mentioned in the contract annexed to the commission, or one of his clerks, who delivered to me the notes upon which this suit is brought. In receiving the said notes I acted for Mr. Ivens, the plaintiff in this action. A letter was brought to Mr. Ivens by the mechanic who erected the machinery on Mr. Woodfolk's plantation, in which it was stated that the machinery was erected and performing satisfactorily. Upon that letter being produced to the business firm of Wm. M. Perkins & Co., above mentioned, the notes in said suit were delivered to me. This circumstance took place about the first of August, 1861.

Fourth. To the fourth interrogatory he says: The machinery referred to in my first answer to the first interrogatory was new at the time of its delivery to and acceptance by Woodfolk. Its value at the time it was delivered to the defendant was fully $3,000, the price for which I understood it was sold. Its value in the month of
19 July, 1864, was more than at the time of its delivery, but I cannot give its value any nearer, except to say that I should think it was worth at least $1,000 more than it was at the time of its delivery. There was no offer made by Woodfolk or any of his agents to return this machinery, or any part of it, to the plaintiff, to my knowledge.

Fifth. To the fifth interrogatory he says: I know that Mr. Ivens, the plaintiff, employed David R. Eakin as a mechanic to put up the machinery referred to on the defendant's plantation; that Eakin performed this work, he being a competent mechanic, and accustomed to erect the class of machinery referred to by me; that after said Eakin had erected said machinery on Woodfolk's plantation, he brought down the letter mentioned by me in my answer to the third interrogatory; that Eakin, having performed satisfactorily as employed in said letter, the plaintiff, Mr. Ivens, paid him (Eakin) $150 for his services. My knowledge of machinery of the kind put upon Woodfolk's plantation is derived from business relations in that branch of business since the year 1857, and upon that knowl-
20 edge I base my judgment of the value of this machinery, as I stated in my answer to the fifth interrogatory.

First. To the first cross-interrogatory he says: David R. Eakin and myself were in the employment of Ivens, the plaintiff, when the machinery was erected. I came to the employment of Ivens about the middle of July, 1861, and remained until about the first of March, 1862. Neither Mr. Eakin nor myself are in the employment of the plaintiff now, nor have either of us been interested, nor are we now interested in the business of Mr. Ivens.

Second. To the second cross-interrogatory he says: David R. Eakin did erect the machinery referred to in the month of July, 1861. I did not assist in the erection of the machinery.

Third. To the third cross-interrogatory he says: I do not know.

Fourth. To the fourth cross-interrogatory he says: I do not know.

Fifth. To the fifth cross-interrogatory he says: I do not know Dr. Lewis. I never heard of any objection being made by him or any one else to the machinery.

Sixth. To the sixth cross-interrogatory he says: I do not
21 know anything of the matters inquired of in this cross-interrogatory.

Seventh. To the seventh cross-interrogatory he says: The notes referred to were given to me personally by the firm of Wm. M. Perkins & Co. on the production of the letter brought by David R. Eakin, as already stated by me. Perkins & Co. retained the letter upon delivering the notes to me. This was about the first of August, 1861. I have not seen that letter since. After I received the notes I delivered them to the plaintiff.

Eighth. To the eighth cross-interrogatory he says: I did not.

Ninth. To the ninth cross-interrogatory he says: It could.

Tenth. To the tenth cross-interrogatory he says: I do not know, as I was not there.

Eleventh. To the eleventh cross-interrogatory he says: It was.

Twelfth. To the twelfth interrogatory he says: I know that Mr. Woodfolk purchased a spark arrester from Mr. Ivens about a month or two after the machinery was erected, at a cost of $60. I should think it would not cost $20 for the freight charges and attaching the spark arrester to the machinery in question.

Thirteenth. To the thirteenth cross-interrogatory he says: I do not know.

22 Fourteenth. To the fourteenth cross-interrogatory he says: I do not know.

Fifteenth. To the fifteenth cross-interrogatory he says: I do not know.

Sixteenth. To the sixteenth cross-interrogatory he says: I do not know.

Seventeenth. To the seventeenth cross-interrogatory he says: An engine and machinery would be complete without a spark arrester, but it would not be complete without a pump.

Eighteenth. To the eighteenth cross-interrogatory he says: I do not know.

Nineteenth. To the nineteenth cross-interrogatory he says: I do not know.

Twentieth. To the twentieth cross-interrogatory he says: I do not know.

Twenty-first. To the twenty-first cross-interrogatory he says: I do not know.

W. M. ABERNATHY.

Subscribed and sworn to before me, this 29th March, 1865.

[SEAL.] R. H. SHANNON,
U. S. Commissioner.

Albert Henning, a witness, produced, sworn, and examined under the interrogatories and cross-interrogatories hereunto annexed, says:

23 First. To the first interrogatory he says: I know the plaintiff, and have known him for 6 years last past. I do not know the defendant.

Second. To the second interrogatory he says: I have looked at the copy-contract referred to; I drew the original contract, of which that is a copy. The machinery therein referred to was delivered and erected in good condition as far as I know. I do not know by whom the machinery was received; I know it was delivered upon Woodfolk's plantation, and to the best of my knowledge there was no objection made until this suit was brought.

Third. To the third interrogatory he says: I do not know.

Fourth. To the fourth interrogatory he says: I do not know as to the first part of this interrogatory. The value of the machinery in July, 1864, was about $5,000. I do not know of any offer to return the machinery by Woodfolk.

Fifth. To the fifth interrogatory he says: I know that David R. Eakin, one of the witnesses in this case, is now absent and out of this State, having been absent for the last two years. I do not know anything further.

24 First. To the first cross-interrogatory he says: I was not in the employ of the plaintiff when the machinery was erected. I am not, nor have I ever been, interested in the business of Mr. Ivens. I have been in the employment of Mr. Ivens since about the first of June, 1862.

Second. To the second cross-interrogatory he says: I did not.

Third. To the third cross-interrogatory he says: I do not know.

Fourth. To the fourth cross-interrogatory he says: I do not know.

Fifth. To the fifth cross-interrogatory he says: I do not know.

Sixth. To the sixth cross-interrogatory he says: I do not know.

Seventh. To the seventh cross-interrogatory he says: I do not know.

Eighth. To the eighth cross-interrogatory he says: I did not.

Ninth. To the ninth cross-interrogatory he says: It could.

Tenth. To the tenth cross-interrogatory he says: I do not know; I was not present.

Eleventh. To the eleventh cross-interrogatory he says: It was.

Twelfth. To the twelfth cross-interrogatory he says: All I
25 know about this inquiry is, that some time after the erection of this machinery, Mr. Ivens sold to Woodfolk a spark arrester for $60. As to the remainder of this cross-interrogatory, I do not know.

Thirteenth. To the thirteenth cross-interrogatory he says: I do not know.

Fourteenth. To the fourteenth cross-interrogatory he says: I do not know.

Fifteenth. To the fifteenth cross-interrogatory he says: I do not know.

Sixteenth. To the sixteenth cross-interrogatory he says: I do not know.

Seventeenth. To the seventeenth cross-interrogatory he says: Yes, it is.

Eighteenth. To the eighteenth cross-interrogatory he says: I do not know.

Nineteenth. To the nineteenth cross-interrogatory he says: I do not know.

Twentieth. To the twentieth cross-interrogatory he says: I do not know.

Twenty-first. To the twenty-first cross-interrogatory he says: I do not know.

A. HENNING.

Subscribed and sworn to before me, this 29th day of March, 1865.

[SEAL.] R. H. SHANNON,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans, ss:

26 Personally appeared before me, the undersigned, Robert H. Shannon, as commissioner of the United States in and for the eastern district of Louisiana, duly commissioned and sworn, George Pureglove, a witness produced, sworn, and examined on behalf of the plaintiff, Edmund M. Ivens, in the suit above entitled under the commission hereto annexed, who, being duly sworn, says:

First. To the first interrogatory he says: I know Mr. Ivens, the plaintiff, and have known him for some years last past. I do not know the defendant.

Second. To the second interrogatory he says: I know nothing of the matters inquired of in this interrogatory.

Third. To the third interrogatory he says: I know nothing of the the matters inquired of.

Fourth. To the fourth interrogatory he says: I know nothing of the matters inquired of.

Fifth. To the fifth interrogatory he says: I am a machinist, and have been for the last fifteen years in the State of Louisiana. I have furnished and erected a large number of engines, with machinery at-

tached, upon various plantations in said State, and I know that it has always been the custom among planters, in all contracts for the erection of machinery, to furnish the necessary negro labor and
27 board of mechanics during the putting up of the machinery.

First. To the first cross-interrogatory he says: I do not know.

Second. To the second cross-interrogatory he says: I do not know.

Third. To the third cross-interrogatory he says: I do not know.

Fourth. To the fourth cross-interrogatory he says: I do not know.

Fifth. To the fifth cross-interrogatory he says: I do not know.

Sixth. To the sixth cross-interrogatory he says: I do not know.

Seventh. To the seventh cross-interrogatory he says: I do not know.

Eighth. To the eighth cross-interrogatory he says: I did not.

Ninth. To the ninth cross-interrogatory he says: It could. There is not one in twenty have it.

Tenth. To the tenth cross-interrogatory he says: I do not know.

Eleventh. To the eleventh cross-interrogatory he says: Yes, it was.

Twelfth. To the twelfth cross-interrogatory he says: I do not know.

Thirteenth. To the thirteenth cross-interrogatory he says:
28 I do not know.

Fourteenth. To the fourteenth cross-interrogatory he says: I do not know.

Fifteenth. To the fifteenth cross-interrogatory he says: This engine could draw, if the well is close enough.

Sixteenth. To the sixteenth cross-interrogatory he says: An engine could only be supplied by the pump attached when in operation. I know nothing further of the matters inquired of in this cross-interrogatory.

Seventeenth. To the seventeenth cross-interrogatory he says: That depends upon the distance the water is from the engine pump. It is complete without a spark arrester.

Eighteenth. To the eighteenth cross-interrogatory he says: I do not know.

Nineteenth. To the nineteenth cross-interrogatory he says: I do not know.

Twentieth. To the twentieth cross-interrogatory he says: I do not know.

Twenty-first. To the twenty-first cross-interrogatory he says: I do know.

GEORGE PUREGLOVE.

Subscribed and sworn to before me, this 29 day of March, A. D. 1865.

[SEAL.] R. H. SHANNON,
U. S. Commissioner

29 John Clark, a witness produced, sworn, and examined before the undersigned, on the part of the plaintiff, in the suit in the United States circuit court for the sixth circuit for the district of Middle Tennessee, in which Edmond M. Ivens is plaintiff, and William W. Woodfolk is defendant, who being duly sworn, says:

First. To the first interrogatory he says: I know the plaintiff, and have known for six years last past. I do not know the defendant.

Second. To the second interrogatory he says: I know nothing in relation to the matters inquired of in this interrogatory.

Third. To the third interrogatory he says: I know nothing of the matters inquired of.

Fourth. To the fourth interrogatory he says: I know nothing of the matters inquired of.

Fifth. To the fifth interrogatory he says: I am a machinist, and have been for the last thirty years, and for the last eighteen years in the State of Louisiana. I have been engaged in the manufacture and erection of engines and machinery upon plantations in said State, and I know it has always been the custom among planters in all contracts for the erection of machinery to furnish the necessary
30 help and board of mechanics during the putting up of the machinery.

First. To the first cross-interrogatory he says: I do not know.

Second. To the second cross-interrogatory he says: I do not know.

Third. To the third cross-interrogatory he says: I do not know.

Fourth. To the fourth cross-interrogatory he says: I do not know.

Fifth. To the fifth cross-interrogatory he says: I do not know.

Sixth. To the sixth cross-interrogatory he says: I do not know.

Seventh. To the seventh cross-interrogatory he says: I do not know.

Eighth. To the eighth cross-interrogatory he says: I did not.

Ninth. To the ninth cross-interrogatory he says: It could. I have known a great number, and have never known one to have it.

Tenth. To the tenth cross-interrogatory he says: I do not know.

Eleventh. To the eleventh cross-interrogatory he says: Yes, it was.

Twelfth. To the twelfth cross-interrogatory he says: I do not know.

Thirteenth. To the thirteenth cross-interrogatory he says: I do not know.

31 Fourteenth. To the fourteenth cross-interrogatory he says: I do not know.

Fifteenth. To the fifteenth cross-interrogatory he says: The pumps attached to that class of engines will draw at an elevation of fifteen feet.

Sixteenth. To the sixteenth cross-interrogatory he says: I do not know.

Seventeenth. To the seventeenth cross-interrogatory he says: An engine is not complete if it does not draw its own supply of water,

provided the water is within the proper distance. It is complete without a spark arrester.

Eighteenth. To the eighteenth cross-interrogatory he says: I do not know.

Nineteenth. To the nineteenth cross-interrogatory he says: I do not know.

Twentieth. To the twentieth cross-interrogatory he says: I do not know.

Twenty-first. To the twenty-first interrogatory he says: I do not know.

JOHN CLARK.

Subscribed and sworn to before me, this 29 day of March, A. D. 1865.

[SEAL.] R. H. SHANNON,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans, ss:

I do hereby certify that the execution of the commission
32 hereto annexed appears from the testimony of the witnesses produced before me on the 29th day of March, one thousand eight hundred and sixty-five, as taken down by me at the time aforesaid.

In witness whereof I have have subscribed my name and affixed my seal of office, this 29th day of March, A. D. 1865, and of the independence of the United States the eighty-ninth.

ROBERT H. SHANNON,
U. S. Commissioner for the Eastern District of La.

UNITED STATES OF AMERICA,
United States Commissioners' Office, State of Louisiana, City of New Orleans:

Before me, Donatien Augustin, United States commissioner for the eastern district of Louisiana, duly commissioned and sworn, personally appeared D. R. Eakin, of the city of New Orleans, of the State of Louisiana, a loyal citizen of the United States, who by virtue of a commission issued by E. R. Campbell, clerk of the United States circuit court, middle district of Tennessee, addressed to me, commanding me to cause the said appearer, D. R. Eakin, to come before me, and then and there take such examination and
33 reduce it to writing, and the said D. R. Eakin being duly sworn, answers as follows to the interrogatories annexed to the aforesaid commission, in the presence of Albert Henning, representing the commercial house, E. M. Ivens, in the following manner, viz:

Interrogatory 1st. Are you an engineer, and did you erect a steam engine on the plantation of Woodfolk sold to him by said Ivens, and other machinery, in the year 1861, and what was the quality of the machinery?

Answer. I am an engineer. I did erect a steam engine on the plantation of Woodfolk sold to him by said Ivens, and other machinery, in the year 1861. It was good machinery, and in perfect running order.

Inter. 2d. Who was the agent of said Woodfolk on his plantation, when the machinery was erected, to accept said machinery?

Answer. It was accepted by the overseer of Mr. Woodfolk. I forget his name. I know he had charge of the place and of the negroes. When I wanted anything I applied to the overseer, and it was furnished.

Inter. 3d. Was a Dr. Lewis there, and did he reside there at the time?

Answer. He was there at the time, two or three times at-
34 tending to some sick negroes.

Inter. 4th. Is a "spark arrester" an extra item in every contract for such machinery?

Answer. Yes.

Inter. 5th. Whose duty was it to provide for bringing the water to the engine?

Answer. It was the duty of Mr. Woodfolk.

Inter. 6th. Did you saw any lumber with the machinery, while you were on the plantation, and how much per day?

Answer. I sawed during six days with the machinery about fifteen hundred feet per day, in all about fifteen thousand feet. I could have sawed five thousand feet per day, if a sufficient quantity of logs could have been supplied.

Inter. 7th. Was the machinery perfect or imperfect, and was it accepted by Woodfolk's agent, after examination, and did he give you a letter of acceptance, and who was his agent? Please state particularly.

F. B. FOGG, *Atto. for Pl'ff.*

Answer. The machinery was in perfect order, and it was accepted by Woodfolk's agent, his overseer, who gave me a letter of acceptance of the work addressed to Mr. Ivens. Mr. Ivens read the letter to me after I got home.

35 Cross-interrogatories:

Ques. 1st. State if at the time you erected the machinery you were a partner or interested with Ivens, and if not, state in what capacity, or in whose employ.

Answer. I was not a partner or interested with Ivens. I was employed by him as a workman, and paid by him.

Ques. 2d. State if the engine and machinery was manufactured and owned by J. R. Anderson & Co., of the Tredegar iron works at Richmond, Virginia, and state if said Ivens was their agent; if not by whom it was made, and who owned it? Give the name of the maker and also his residence.

Answer. The engine and machinery were neither manufactured or owned by J. R. Anderson & Co. of the Tredegar iron works at Rich-

mond, Va. I do not know that Ivens was their agent; the machinery was manufactured by Philip Rahm of Richmond, and owned by E. M. Ivens of New Orleans.

Ques. 3d. State if Woodfolk did not write to Perkins & Co., of New Orleans, after he returned to his plantation, and after you had erected the machinery, refusing to accept it, stating that his agent, Dr. Lewis, had not accepted it, and that it was not in compliance with the contract, and did not Perkins & Co. give that letter to Ivens?

Answer. Not that I know of.

36 Ques. 4th. State if Dr. Lewis was not Woodfolk's agent, and doctor on both plantations at the time you erected the machinery.

Answer. I do not know that Dr. Lewis was Woodfolk's agent, nor that he was doctor for any other plantation than the one I was on at the time above mentioned.

Ques. 5th. State if Woodfolk's plantations were not adjoining.

Answer. I bleieve they were.

Ques. 6th. State if Dr. Lewis had the control and management of both plantations with power to employ and discharge overseers.

Answer. Not that I know of.

Ques. 7th. State if the overseer on the plantation, when you erected the machinery, was not told by Dr. Lewis that he would discharge him for drinking, unless he reformed.

Answer. He never told him so in my hearing, and I never saw the overseer take a drink whilst I was on the plantation.

Ques. 8th. Did you apply to my agent, Dr. Lewis, to accept the engine and machinery, and did he accept or refuse, and who did accept it?

Answer. No; I did not apply to the doctor, not knowing that he had anything to do with it. It was accepted by the overseer.

37 Ques. 9th. Did you ever see the contract between the parties? and if so, did Ivens guarantee the machinery perfect, or to be made so at his expense?

Answer. I never saw the contract.

Ques. 10th. Did you put up, when you erected the machinery, a spark arrester in the chimney?

Answer. No.

Ques. 11th. State if the engine could be run without a spark arrester with safety, unless guarded by several hands with buckets of water. State how many of Woodfolk's hands you employed for that purpose, and state if they were not employed over two months, until the spark arrester was put up, and worth $2 50 per hand each day.

Answer. I did not employ nary one for that purpose, nor any buckets used for that purpose.

Ques. 12th. State if the gin house roof did not take fire from the sparks thrown out of the chimney while you were present for the want of a spark arrester.

Answer. No; there was no roof on the gin house; it was not completed; just the logs were built.

Ques. 13th. Did not Perkins & Co. purchase a spark arrester of Ivens, and pay for it for Woodfolk, after you erected the machinery?

Answer. Yes, I believe so.

38 Ques. 14th. State how long it was after you erected the machinery before the spark arrester was shipped from New Orleans.

Answer. I do not know. I was out of the city at the time.

Ques. 15th. State what a spark arrester was worth in New Orleans, and what would be the expense on it including commissions, drayages, freight, and what a machinist would charge to put it up.

Answer. Of that size I believe it would be worth two hundred and fifty dollars, not including commission, drayage, freight, and what a machinist would charge to put it up, which charges I am ignorant of; besides it would not require a machinist to put it up; anybody can do it.

Ques. 16th. State the day of the month you commenced having the machinery removed from the river to the gin house, and the day of the month you completed the job of erecting the machinery, and left for New Orleans.

Answer. I don't recollect. It was in July, 1861, I began the work, and left there about the end of the month.

Ques. 17th. State how many of Woodfolk's hands and negroes

39 you had employed in removing the machinery from the river to the gin house, and how many days, and how much each hand and wagon was worth.

Answer. I had about eight hands during one day and two wagons during one day; I do not know how much they were worth per day, the hands were slaves.

Ques. 18th. State how many of his hands you had employed, and what each hand was worth per day, and state also if it was not the cotton picking season of the year when hands were worth from $2 50 to $3 per day.

I employed eight hands during one day; I do not know what they were worth; it was not the cotton picking season of the year.

Ques. 19th. State how many thousand bricks were used in erecting the machinery and building the fire house, and did not Woodfolk furnish them. State what they were worth; state also the cost of sand, and state also the wages of the brick mason, and if the material and brick mason were not furnished by Woodfolk; also state if two hands did not wait on the brick mason, and what they were worth, and how many days employed.

Answer. There was no fire house built, it was a portable

40 engine, only two hundred and fifty bricks were used in erecting the machinery, and no other; they were worth, I suppose, two dollars and a half; I performed the mason work myself; the sand and lime used cost about two dollars; no other brick mason was employed but myself, and the materials aforesaid were furnished by Woodfolk; there was one hand, a slave, who was employed during three hours in mixing mortar for me; I do not know the value of that piece of labor; there was no other employed.

Ques. 20th. State if Woodfolk did not furnish you with board while you erected the machinery and until you left, and what it was worth.

Answer. It has been the custom of planters to furnish board to workmen on their places while they are performing work for the plantation. Mr. Woodfolk's overseer furnished me board, and I suppose at two dollars and fifty cents a week it would make about seven dollars and a half for the three weeks I staid.

Ques. 22d. State if there was not a well of water and a large cistern of water made for the purpose of supplying the engine with
41 water within twenty-five or thirty feet of where you erected the engine.

Answer. Yes; there was a cistern of water and a well of water within the distance mentioned, which I understood from persons on the place had been made some years previous for the purpose of supplying the plantation with water.

Ques. 23d. State if the engine did draw its supply of water from either the well or cistern by a pump.

Answer. No.

Ques. 24th. State if it did not take or require two good hands to supply the engine with water by buckets or otherwise all the time the machinery was in motion?

Answer. No; the firemen who attended the fire in the engine supplied the same with water by means of a chain pump from the cistern conveyed to the engine by a trough; I told the overseer it would save the expense of digging a well, and he concluded it was the best way.

Ques. 25th. State if the cotton ginning, sawing, and grinding does not exceed in time more than one half of the year.

Answer. I do not know how to answer that question which I cannot understand, although repeated to me by the commissioner;
42 there is no ginning, sawing, and grinding going on at one and the same time, the ginning would occupy two months and a half, the grinding one day in the week, as to sawing it may be carried on the whole year around.

Ques. 26th. State if those two hands would not be worth $2 50 per day each hand, making $5 00 per day for both hands for a half year.

Answer. There was only one fireman employed, he was a slave; I do not know what his labor was worth.

Ques. 27th. State if an engine and the machinery is complete that will not draw its own supply of water and that has no spark arrester.

Answer. If it does not draw its own supply of water it is not perfect; it was not the case with the machinery in question, which supplied its own water; it may be perfect and complete without a spark arrester.

Ques. 28th. State if Perkins & Co. did not pay for Woodfolk $595, it being the amount of the freight, drayage, insurance, and commissions on the engine and machinery from New Orleans to his plantation; if not, state what amount they did pay.

Answer. I do not know.

D. R. EAKIN.

(Signed) JO. C. GUILD,
Att'y for Def't.

43 Sworn to and subscribed before me, at New Orleans, 30th August, 1865.

D. AUGUSTIN,
U. S. Commissioner.

UNITED STATES COMMISSIONER'S OFFICE
FOR THE EASTERN DISTRICT OF LOUSIIANA.

I, the undersigned, United States commissioner, hereby certify that the above interrogatories and cross-interrogatories were propounded by me as above written, to the witness, D. R. Eakin, who, after being duly sworn, did answer every one of them, which answers I have taken down in my own handwriting in the presence of Albert Henning, representing the commercial house of E. M. Ivens, in the city of New Orleans, this 30th of August, 1865.

In faith whereof I have hereunto affixed my hand and seal.

[SEAL] D. AUGUSTIN,
United States Commissioner.

Copy contract.

Copy of the contract referred to in the depositions read by the plaintiff.

Articles of agreement made and entered into in the city of New Orleans, La., this 5th day of July, eighteen hundred and sixty-one, by and between Edmond M. Ivens, of the first part, and Gen. W. W. Woodfolk, of Nashville, Tennessee, of the second part:

Said Edmond M. Ivens does hereby agree to deliver at New
44 Orleans, one portable steam engine, 11-inch cylinder, 20-inch stroke, 60-inch circular saw mill, with 30 feet of carriage, together with belts and everything necessary to make a complete engine and saw mill, with steam and water gauges, steam whistle, &c.; also 40 feet of gin shafting, with pulleys, boxes, couplings, &c., necessary to work 4 gin stands and corn mill, one pair of truck axles and wheels, one complete cotton seed carrier; one 30-inch double geared Staub corn mill; and 120 feet of 10-inch 4-ply gin belt, all delivered as above at New Orleans, and furnishes mechanic to erect the same, for the sum of three thousand six hundred ninety-six 30-100 dollars, ($3.696 30,) said machinery guaranteed perfect and complete, or to be made so at the expense of said E. M. Ivens, machinery guaranteed to saw six thousand feet of one-inch boards per day when properly managed.

Said Gen. W. W. Woodfolk, of the second part, does hereby agree to pay said E. M. Ivens, as follows: $496 30, dollars cash, on ship-

ping of machinery, $1,200 00 in W. W. Woodfolk's note, payable at the office of Wm. M. Perkins & Co., on the first of December next, with 8 per cent. from 1st August, and $2,000 00 in note, payable on 1st Nov'r, 1862; and also bearing interest at the rate of 8 per cent. from 1st August, 1861, the said notes to be given to said Ivens by Wm. M. Perkins & Co. of this city, upon presentation of letters of acceptance of machinery by said Woodfolk, or his agent, on plantation. Party of the second part does hereby agree to accept machinery as soon as erected and found to correspond with above representation; the acceptance is fully understood to be an acknowledgement of fulfilment of contract by party of the first part, and to be a full and entire release from this article of agreement.

45

EDMOND M. IVENS.
WM. W. WOODFOLK.

Witnesses to the signature of Edmond M. Ivens—
D. R. GRIBBLE,
J. H. KERNER,
New Orleans.

The plaintiff introduced Samuel P. Ament.

He proved that a spark arrester was no part of an engine and machinery. The plaintiff read the two notes, which are as follows:

Notes.

$1,233 33. NEW ORLEANS, *August 1st*, 1861.

On the first of Dec'r next I promise to pay to the order of Edmond M. Ivens, twelve hundred thirty-three $\frac{33}{100}$ dollars, payable at the office of Wm. M. Perkins & Co., N. Orl's, with interest at the rate of 8 per cent. per annum after maturity until final payment.

46

WM. W. WOODFOLK.

$2,204 44. NEW ORLEANS, *August* 1, 1861.

On the first day of Nov'br, 1862, after date I promise to pay to pay to the order of Edmond M. Ivens, two thousand two hundred and four $\frac{4}{100}$ dollars, payable at the office of Wm. M. Perkins & Co., N. Orl's, with interest at the rate of 8 per cent. per annum after maturity until final payment.

WM. W. WOODFOLK.

Contract.

And likewise the contract which is as follows:

Articles of agreement made and entered into in the city of New Orleans, La., this 5th day of July, eighteen hundred and sixty-one, by and between Edmond M. Ivens of the first part, and Gen'l W. W. Woodfolk, of Nashville, Tennessee, of the second part:

Said Edmond M. Ivens does hereby agree to deliver at New Orleans one portable steam engine, 11-inch cylinder, 20-inch stroke, 60-inch

circular saw mill, with 30 feet of carriage, together with belts and everything necessary to make a complete engine and saw mill, with steam and water gauge, steam whistle, &c.; also, 40 feet of gin shafting, with pulleys, boxes, couplings, &c., necessary to work four gin stands and corn mill; one pair of truck axles and wheels; one complete cotton seed carrier; one 30-inch double geared Staub
47 corn mill, and 120 feet 10-inch 4-ply gin belt; all delivered as above at New Orleans, and furnishes mechanic to erect the same, for the sum of three thousand six hundred ninety-six 30-100 dollars ($3,696 30-100.) Said machinery guaranteed perfect and complete machinery, or to be made so at the expense of the said E. M. Ivens. Machinery guaranteed to saw six thousand feet one-inch boards per day when properly managed. Said Gen. W. W. Woodfolk, of the second part, does hereby agree to pay said E. M. Ivens as follows: $496 30 cash on shipping of machinery; $1,200 00 in W. W. Woodfolk's note, payable at the office of Wm. M. Perkins & Co., on the first of December next, with 8 p. c. interest from 1st August; and $2,000 00 in note, payable on the 1st Nov'r, 1862,also bearing interest at the rate of 8 p. c. from August 1st, 1861. The said notes to be given to said Ivens by Wm. M. Perkins & Co., of this city, upon presentation of letter of acceptance of machinery by the said W. W. Woodfolk, or his agent, on plantation. Party of the second part does hereby agree to accept machinery as soon as erected and found to correspond with above representation. The acceptance is fully understood to be an acknowledgment of the fulfilment of
48 contract by party of the first part, and to be a full and entire release from this article of agreement.

EDMOND M. IVENS.
W. W. WOODFOLK.

Witnesses to signature of Edmond M. Ivens—
R. D. GRIBBLE,
J. H. KERNER,
New Orleans.

Which was all the proof introduced by the plaintiff. The defendant then read the deposition of J. E. Lewis, which is as follows:

Deposition of J. E. Lewis.

In the circuit court of the United States, at Nashville, for the district of Middle Tennessee.

EDMOND M. IVENS
vs.
WM. W. WOODFOLK.

The interrogatories to be answered by J. E. Lewis, a witness whose testimony is to be read in the above cause on behalf of defendant:

Ques. 1st. Who was the doctor and agent on Wm. W. Woodfolk's plantation in Arkansas for the year 1861 ?

Ques. 2d. Have you seen and read the contract made and entered into between said Ivens and Woodfolk?

Ques. 3d. State in what year said Ivens or his agent erected the engine and machinery on said Woodfolk's plantation, and
49 whether the same was complete and perfect, and in compliance with the contract; if not in compliance with the contract, state in what particular.

Ques. 4th. Did you, as the agent of Woodfolk, accept and receive said engine and machinery, and give a statement to Perkins & Co. in writing that said machinery was accepted by me, and for him to deliver Woodfolk's notes to said Ivens?

Ques. 5th. What was the duties and powers of the overseer on the plantation? had he any such powers as to make contracts in regard to machinery, or to determine the important question of receiving such machinery under said contract?

Ques. 6th. What was the freight on the engine and machinery from New Orleans to Woodfolk's landing, and who paid the freight?

Ques. 7th. State how many hands were employed in moving the engine and machinery from the river to the gin-house, and erecting the same, and what their services were worth; also how many thousand brick it required to erect or build the fire-house, and put pillars under the engine, and what the brick and materials and hands employed were worth.

JO. C. GUILD,
Atto. for Deft.

Cross-interrogatories for plaintiff:

50 1st. Who erected the machinery on Woodfolk's plantation and put it in operation, and at what time?

2d. Who was Woodfolk's agent on that plantation at the time the machinery was erected, and superintended for him the erection of it?

3d. Did you live on the plantation at the time the machinery was erected, or how far did you reside from it, and what was your profession and occupation?

4th. What engineer erected the machinery? and did he not, after its completion, saw a large quantity of lumber, and how many feet per day?

5th. Who wrote the letter of acceptance to plaintiff, and were you there after the machinery was erected and when? and was the plantation in good order and condition during that and the next year, and is it now occupied and cultivated by Woodfolk?

F. B. FOGG, *for Pl'ff.*

Answers of J. E. Lewis to the interrogatories filed by defendant Woodfolk:

Ans. to ques. 1st. I was his physician and lawful agent in 1861, and had been for several years before and afterwards.

51 Ans. to ques. 2d. I have seen and read the contract entered into by W. W. Woodfolk and Edmond M. Ivens.

Ans. to ques. 3d. The engine was erected in the year 1861 by Ivens' agent, viz, (D. R. Eakins.) It was not complete and perfect and in compliance with the contract, because there was no spark arrester, which was very necessary to prevent fire, and no engine is considered complete without one; and it required hands to guard against fire, which was an additional expense, and the engine did not draw its own supply of water from the well and the cistern close by, and it required hands to furnish water from the well and cistern with buckets during the ginning season, and also when the engine was used for sawing and grinding; the ginning generally commences in August and ends in January. These are serious objections, because for want of spark arrester the gin-house was constantly in danger of taking fire, and also because it kept two hands to guard against fire, and two or more hands to supply the engine with water, in all about four hands out of the field during the ginning season, and when the en-
52 gine was in use for other purposes. Had the spark arrester and pump been complete, the hand would have been unnecessary; and their work during the season for picking cotton was worth from 2 to 3 dollars per hand a day; and also the saw did not cut six thousand feet of lumber per day, as guaranteed by the contract.

Ans. to ques. 4th. I did not accept said engine and machinery, nor did I give a statement in writing to Perkins & Co. that the said machinery was accepted by me, and for him to deliver said Woodfolk's notes to said Ivens.

Ans. to ques. 5th. I was Woodfolk's agent, and the overseer was under my directions and control during Woodfolk's absence, and he had no power or authority to act in my place. And if he did receive the said engine, he did so without my consent, and may have been influenced by improper motives.

Ans. to ques. 6th. I suppose the freight on the engine and machinery from New Orleans to Woodfolk's landing, in Arkansas, would be two hundred dollars or more, which was paid by Woodfolk.

Ans. to ques. 7th. I am unable to state what would be the exact cost or worth to move the engine, &c., from the river bank to the
53 gin-house. And also unable to state what would be the cost of erecting and putting up said engine, or the cost of the fire-house. But as it was very necessary to have the engine and machinery in operation as soon as possible to gin the cotton in the gin-house to make room for other cotton, every hand that was necessary was employed in putting the machinery in operation. However, I would state that the hands and materials furnished by Woodfolk, and time lost by the said hands during the cotton picking season, would amount to from eight to ten hundred dollars.

J. E. LEWIS.

Answer of J. E. Lewis to the cross-interrogatories filed by F. B. Fogg, counsel for the plaintiff:

Ans. to int. 1st. The machinery was erected by D. R. Eakin, and put into operation by him in the summer of 1861.

Ans. to int. 2d. I was Woodfolk's agent on the plantation when the machinery was erected.

Ans. to int. 3d. I am a physician by profession, and resided sometimes on one plantation and sometimes on the other, as the health of the places required my attention; the places were near together.

Ans. to int. 4th. David R. Eakin erected the machinery;
54 and could not state how much timber he sawed, but should think about three or four thousand feet per day.

Ans. to int. 5th. I did not write any letter of acceptance of the machinery, nor do I know that there was any written by any person. I was there when the machinery was erected, before and afterwards. The plantation was in good order and condition in the years 1861 and 1862, and is at present occupied by W. W. Woodfolk.

J. E. LEWIS.

Answer to interrogatories and cross-interrogatories sworn to and subscribed before me, this Aug'st 15th, 1865.

[SEAL.] E. R. CAMPBELL,
Com'r U. S. Circuit Court for the Mid. Dist. of Tenn.

The defendant then introduced William Woodfolk, a witness, who after being duly sworn, proved that he was the son of the defendant; that the defendant owned two plantations in Arkansas, lying near each other; that he was upon the plantations in the month of Oct., 1861; saw the machinery erected by the plaintiff's agent. That Dr. J. E. Lewis was for that year the agent of the defendant on these plantations attending to the defendant's business; that the
55 overseer had charge of the hands, but was not the defendant's agent to contract or bind the defendant; that said overseer was addicted to drinking too much ardent spirits, and was discharged by the defendant from the plantation in the month of November, 1861; that the defendant's gin-house was much endangered from the fire and sparks from the engine from the want of a spark arrester. It caught fire several times, and the hands had to be in attendance to prevent the houses from being burnt down. Defendant had to send to New Orleans, and bought a spark arrester from the plaintiff, and paid him sixty dollars for it, and applied it to prevent fire. The saw could not cut six thousand feet of boards per day. The engine could not draw its supply of water from the well and cistern built for the purpose. It required two hands to keep it supplied with water. The war came on and the machinery remained on the plantation. It was not run during the war, and is used now. His father had it, and has it now. The cotton was burnt, but none of the houses.

This was all the proof in the case.

56 At the April term, 1865, and also at the October term, 1865, this cause was continued on affidavit of the defendant.

On the 7th day of May, 1866, an order was entered which is as follows:

Judgment.

EDMOND M. IVENS
vs.
W. W. WOODFOLK.

The parties appear by their attorneys, and thereupon came a jury of good and lawful men, to wit, Thomas Comer, C. B. Hall, John Reddick, James Davis, R. T. Warner, G. T. Coit, Joshua Flowers, G. W. McMurry, J. B. Knowles, B. R. Cutter, Reese W. Porter, and C. L. Temple, who being elected, tried, and sworn well and truly to try the issue joined, after hearing the pleadings were adjourned until to-morrow morning at ten o'clock.

On the 8th day of May, 1866, a judgment was rendered, which is as follows:

Judgment.

EDMOND M. IVENS
vs.
WM. W. WOODFOLK.

57 The parties appear by their attorneys, and thereupon came a jury of good and lawful men, to wit, Thomas Comer, C. B. Hall, John Reddick, James Davis, R. T. Warner, G. T. Coit, Joshua Flowers, G. W. McMurry, J. B. Knowles, B. R. Cutter, Reese W. Porter, and C. L. Temple, who being elected, tried, and sworn the truth to speak upon the issue joined, upon their oaths do say that they find the issues in favor of the plaintiff, and that the plaintiff has sustained damages by reason of the non-performance of the promises and undertakings in the declaration mentioned, amounting to the sum of four thousand four hundred and ninety-six dollars and fifty-five cents. It is therefore considered by the court that the plaintiff recover of the defendant the damages aforesaid by the jury aforesaid assessed, and the costs of this suit, and that fi. fa. issue.

Charge.

The court charged the jury, among other things not excepted to, as follows:

If the machinery was defective or the plaintiff failed fully to comply with his contract it was the duty of the defendant to notify the plaintiff and Wm. M. Perkins & Co. of these defects or failure, and if he did not do so the jury might infer that this overseer, by
58 whom it was accepted, was defendant's authorized agent, and that it was in compliance with the contract.

(To which exception is taken.)

Further the court charged the jury:

That the defendant was bound first to notify the plaintiff and Wm. M. Perkins & Co. of any defects of the machinery or non-compliance with the contract, and if he did not do so the defendant would be responsible and bound to pay the notes sued on.

(To which exceptions are likewise taken.)

Thereupon the jury retired and rendered their verdict.

The defendant then moved the court for a new trial, which motion was overruled, and the court rendered judgment, to which action of the court the defendant except, and tenders this his bill of exceptions, which is signed and sealed by the court, and made part of the record.

[SEAL.] CONNULLY F. TRIGG.

Appeal bond.

Know all men by these presents, that we, William W. Woodfolk and Alexander Fall are firmly bound unto Edmond M. Ivens
59 in the just and full sum of eight thousand nine hundred and ninety-three dollars and ten cents, to be paid to the said Edmond M. Ivens, his certain attorney, executor, administrator, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly, by these presents.

Sealed with our seals and dated this 15th day of May, A. D. 1866.

Whereas lately, in a suit depending in the circuit court of the United States for the middle district of Tennessee, between Edmond M. Ivens and Wm. W. Woodfolk, and the said William W. Woodfolk having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Edmond M. Ivens, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the first Monday of December next:

Now the condition of the above obligation is such, that if the said William W. Woodfolk shall prosecute said writ of error with
60 effect, and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.] WM. W. WOODFOLK.
[SEAL.] ALEXANDER HALL.

Sealed and delivered in the presence of—
R. S. TUTHILL.
JOHN L. SPARLOCK.

Approved.

CONNULLY F. TRIGG,
U. S. District Judge for the Districts of Tennessee, presiding.

Bill of costs.

Judgment, May 8, 1866, $4,496 55.

Clerk's fees:

Making transcript, $13 21; certificate, 30c.; seals, 40c.; issuing dedimus certificate and seal, $1; copying interrogatories, $1 20; taking bond, 60c.; taking deposition of Lewis, $2 30; seal, 20c.; aff't. 10c.; cert, 15c.; filing 13 papers, $1 30; enrolling papers in cause, $19 92; total ($40 78) forty 78-100 dollars. Paid by Woodfolk.

UNITED STATES OF AMERICA,
Middle District of Tennessee:

I, E. R. Campbell, clerk of the circuit court of the United States for said district, do hereby certify that the foregoing (60 pages) is a true, complete, and correct transcript of the record of the case of Edward M. Ivens *versus* William W. Woodfolk, as appear from the records in my office.

In testimony whereof I have hereunto set my hand and the seal of said court, at Nashville, in said district, this 21st day
61 of October, in the year of our Lord eighteen hundred and sixty-six, and of the independence of the United States the 91st year.

[SEAL.]

E. R. CAMPBELL,
Clerk U. S. Circuit Court for the Middle Dist. of Tennessee.

UNITED STATES OF AMERICA,
Middle District of Tennessee, ss:

I, Connally F. Trigg, United States district judge for the several districts of Tennessee, do certify that E. R. Campbell, whose signature is attached to the foregoing certificate, is, and was at the date thereof, clerk of the circuit court of the United States for the district aforesaid, to all whose lawful acts as such full faith and credit are due and should be accorded throughout the United States and elsewhere, and that the foregotng certificate is in due form of law.

In testimony whereof I have hereunto set my hand, this October , 1866, and of the independence of the United States the 91st year.

[SEAL.]

CONNALLY F. TRIGG,
U. S. District Judge, &c.

62 UNITED STATES OF AMERICA,
Middle District of Tennessee, ss:

I, E. R. Campbell, clerk of the circuit court of the United States, for said district, do certify that 'Connally F. Trigg, whose name is subscribed to the foregoing certificate, is United States district judge for the several districts of Tennessee, duly commissioned and qualified.

In testimony whereof I have hereunto set my hand and the seal of said court, at Nashville, in said district, this the day of October, in the year of our Lord eighteen hundred and sixty-six, and of our independence the 91st.

E. R. CAMPBELL,
Clerk U. S. Cir. Court, Mid. Dist. of Tennessee.

63 The President of the United States of America to Edmond M. Ivens, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 1st Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the sixth circuit and middle district of Tennessee, wherein William W. Woodfolk is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this the 15th day of May, in the year of our Lord 1866, and of the independence of the United States the 90th year.

CONNALLY F. TRIGG,
U. S. District Judge for the Districts of Tennessee, presiding, &c.